

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA08-615

GEORGE BRUCE PROCTOR  
PATRICIA CATHERINE PROCTOR  
APPELLANTS

V.

MAX F. VICKERS  
CHERYL A. VICKERS  
APPELLEES

**Opinion Delivered** March 11, 2009

APPEAL FROM THE PRAIRIE  
COUNTY CIRCUIT COURT,  
SOUTHERN DISTRICT  
[NO. CV-05-30-1]

HONORABLE BILL MILLS, JUDGE

AFFIRMED

### LARRY D. VAUGHT, Chief Judge

Appellants Patricia and George Proctor appeal the decision of the Circuit Court of Prairie County, Arkansas, quieting title to property in appellees Cheryl and Max Vickers. The trial court found that the Vickers had adversely possessed a .88 acre piece of real property to which the Proctors held legal title. On appeal, the Proctors claim that the trial court utilized an improper standard in its determination that any permissive use of the real estate had ended. We affirm.

This dispute concerns a small portion of property lying between two adjoining 3.5 acre parcels of land that were once both owned by George Proctor. In 1992, title to one of the two parcels was conveyed to the Vickers. In question in this appeal is the less-than-acre piece of property that housed a storage building. According to a survey introduced at trial, the property in question was retained by the Proctors following the 1992 conveyance. In response

to an action filed by the Proctors for damages to the storage building, the Vickers filed a counterclaim—relying on their alleged adverse possession—to quiet title in the .88 acre tract and the storage-building structure located on the property. The essential issue at trial was whether the Proctors had permitted the Vickers to use the controverted property, thereby undermining any adverse-possession claim they attempted to advance. The trial court concluded that the Vickers had shown that their claim to the property was open and hostile to the Proctors’ ownership rights for a period in excess of seven years’ time.

As this case is based in equity, we review using a *de novo* standard, but we will not reverse unless the trial court’s findings of fact are clearly erroneous. *Thompson v. Fischer*, 364 Ark. 380, 220 S.W.3d 622 (2005). A finding of fact is clearly erroneous when we are left with a definite conviction that a mistake was committed, after due deference is afforded to the trial court’s superior position to determine the credibility of the witnesses and the weight to be afforded their testimony. *Schrader v. Schrader*, 81 Ark. App. 343, 101 S.W.3d 873 (2003). As to the claim of adverse possession, the law is well-settled—in order for adverse possession to ripen into ownership, possession for seven years must be actual, open, notorious, continuous, hostile, exclusive, and it must be accompanied by an intent to hold it against the true owner. *Moore v. Anthony-Jones Lumber Co.*, 252 Ark. 883, 481 S.W.2d 707 (1972). Further, in order to establish adverse possession the continuous and visible acts of ownership exercised over the premises must be such that the owner of the paper title would have knowledge of the fact, or his knowledge may be presumed as a fact. *Id.* Possession which is so open, visible, and notorious as to give the owner constructive notice of an adverse claim need not be manifested in any particular manner, but there must be such physical evidence thereof as would

reasonably indicate to the owner, if he visits the premises and is a man of ordinary prudence, that a claim of ownership that is adverse to his is being asserted. *Id.*

The evidence adduced at trial showed that—without permission from the Proctors—the Vickers made an insurance claim after the property was damaged by a storm; removed fencing from the property; allowed their children to shoot arrows and bullets into the sheet metal of the storage building; bulldozed dead trees from the property; erected a fuel tank on the parcel; and constructed a pool that encroached on the boundary. Clearly, these are acts of ownership and dominion that one would not exercise over the land of another. The evidence showed that the Proctors had not visited the property during the 1992–2003 time period, yet the Vickers’ acts were so notorious that they provided constructive notice of their claim. And, regardless of whether the Proctors initially gave the Vickers permission to store items in the shop, a point that is not conceded by the Vickers, any initial permissive use ripened into an adverse claim based on their extensive, open, notorious, and prolonged use of not just the storage building but the entire .88 acre parcel owned by the Proctors.

Because the evidence supports the trial court’s finding that the Vickers established that they adversely possessed the .88 acres of land, in accordance with all statutorily required provisions,<sup>1</sup> we affirm its decision quieting title in their favor.

Affirmed.

GLADWIN and KINARD, JJ., agree.

---

<sup>1</sup> The Proctors argue that in order to assert an adverse possession claim the Vickers were required to show that they paid ad valorem taxes on the parcel in dispute. However, that is not the case. The Proctors’ argument ignores the fact that the Vickers owned a contiguous parcel of real property to the tract that they claimed to have adversely possessed and, as such, only have to have paid taxes on the adjoining parcel to which they held legal title. Ark. Code Ann. § 18-11-106 (Repl. 2006).